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Policy 21 Limited
Room1101-02, 11/F, Times Tower,
928-930 Cheung Sha Wan Road,
Kowloon, Hong Kong

Dear Sirs,

The Sharing of Mortgage Data for Credit Assessment Consultation Document
("Consultation Document")

The Office of the Privacy Commissioner for Personal Data (PCO) published a consultation paper on the sharing of mortgage data for credit assessment on 5 January. The Hong Kong Monetary Authority (HKMA) welcomes the PCO's public consultation.

The HKMA fully supports the industry proposal for sharing of mortgage data for credit assessment as it would further strengthen credit risk management of credit providers and is therefore conducive to the general stability of the banking system in Hong Kong, which is crucial to the interest of depositors as well as the financial stability and economic development of Hong Kong as a whole. Given that mortgage loans account for about 40% of "Loans for Use in Hong Kong" of the banking sector, any credit problems associated with such loans would have far-reaching implications for overall banking stability. The HKMA therefore takes the view that enhancement to the sharing of mortgage data is necessary for the maintenance of banking and financial stability in Hong Kong in the longer term. In fact, the sharing of positive mortgage data has been in place in many other jurisdictions for many years including US, UK, Taiwan and Singapore. The principal objective of the industry proposal, which involves sharing of information on the number of mortgaged properties only rather than details of such properties in order to mitigate potential privacy concerns, is to promote responsible borrowing and lending and to reduce the risk of over-borrowing by consumers.

As pointed out in the Consultation Document, at a macro level, it is recognised that the expansionary fiscal measures and the easing of monetary policies adopted in a number of countries would result in a surge in global liquidity and possible inflow of

hot money into Hong Kong, thereby increasing the risk of an asset bubble. It is therefore important to guard against the risk of any possible property bubble forming and subsequent bursting. Some may argue that the mortgage loan portfolios of banks have demonstrated relatively low delinquency ratios during the Asian Financial Crisis. Notwithstanding this, it is worth noting that the current interest rate environment is exactly opposite to that prevailing during the Asian Financial Crisis. When an asset bubble burst is coupled with a significant interest rate increase rather than persistent interest rate drop, mortgage borrowers would find it harder to weather through the downturn due to much higher repayment burden. Therefore, the market performance of the mortgage portfolio in the last round of market downturn could be very different from the situation that Hong Kong may face in the next round of adjustment. To mitigate such risks, the proposal will help credit providers to substantially improve their credit assessment and ought to deter borrowers from over-stretching themselves.

At a micro level, it is worth pointing out that borrowers are already currently required to declare whether they have any other outstanding mortgages when applying for a loan from an authorised institution. Therefore, in practical terms, the proposed positive mortgage data sharing, which only involves sharing of information on the number of mortgages, will not result in borrowers providing additional personal information to a potential lending institution, and such information will, under the proposed framework, only be accessible by a credit provider from the CRA when it makes an enquiry, with the consent of the customer, upon receipt of a credit application. At the same time, the proposed arrangement will enable credit providers to conduct more complete and accurate assessment of the repayment ability of all applicants and not just those who have made full disclosure to the lending institutions. This will help ensure a level playing field for all loan applicants, thereby creating a more efficient market for consumer lending and borrowing. The arrangement will also help deter borrowers from providing false information or omitting information on mortgages they already have when applying for a loan from a credit provider.

As regards benefits to customers, as an example, since the introduction of the Consumer Credit Reference Agency in 2003 which provides positive credit data in relation to personal loans and credit card advances, customers with favourable credit records have been able to obtain loans at lower interest rates. Since then, the rollover rate of credit cards (that is, the percentage of total outstanding balance of credit card lending to the total credit card receivables) has dropped from 54% to 25% while the non-credit card lending market has been growing rapidly. This is because credit providers have been able to offer credit worthy customers outstanding credit card balance transfer services whereby they transfer such balances to personal loans. Generally speaking, the interest rate for personal loans is much lower than that of credit card advances. That shows that consumers have benefited as a result.

On the whole, we consider the proposal, which have been developed after taking into account views from different stakeholders, has struck a right balance between individuals' right to data privacy and the broader public interest.

Please refer to the Annex for HKMA's comments on the six privacy issues raised in the Consultation Document.

Yours faithfully,

c.c. The Chairman, Consumer Credit Forum
The Chairman, HKAB
The Chairman, DTCA
FSTB (Attn: Miss Natalie Li)

Encl.

Issue 1 – Types of mortgage loans to be covered

The HKMA considers that it is necessary and not excessive for the CRA to hold the additional mortgage data as proposed (i.e. positive mortgage data of residential properties, and both positive and negative mortgage data of non-residential properties contributed by the credit providers) based on the following:-

- Property investors / speculators not only invest / speculate in residential properties (but also in non-residential properties). Indeed, if the mortgage loans were confined to residential mortgages, there is a likelihood that investors / speculators would invest / speculate in the non-residential sector given the loophole. Therefore, to achieve the principal objective of the proposal, it is necessary to share both mortgage data of residential and non-residential properties. Excluding non-residential properties from the proposed scheme would render the mortgage database much less useful.
- The proposed scope covering non-residential properties is in line with that adopted in advanced economies such as the US, UK, Canada and other Asian markets such as Mainland China, Taiwan and Singapore.
- Regarding sharing of negative data of non-residential properties, if positive mortgage data of non-residential properties would be shared, it is a natural extension that the negative data of non-residential mortgages should also be covered to allow a comprehensive picture to be obtained from the CRA database. Otherwise, the system would become very confusing and difficult to operate.
- The HKMA supports that sharing of negative mortgage data of non-residential properties is appropriate and necessary to give a full picture of borrowers' total indebtedness.

Issue 2 – Types of data to be contributed by credit providers to the CRA and to be accessed by credit providers: Positive and Negative

- The HKMA is pleased to note that the Office of the Privacy Commissioner for Personal Data (PCO) is of the view the proposed types of data items to be contributed and accessed under this Issue represent the minimum amount of data necessary for the purpose of assessing the credit risk of consumer credit applicants.
- The HKMA believes the industry proposal is a well-balanced one after taking views from different stakeholders into consideration. In fact, the current proposal (being the revised version following discussions with the PCO) has substantially reduced the range of data items to be shared as compared with the original industry proposal forwarded to the PCO in October 2009.
- The HKMA is well aware of the need to keep the proposed data items to be shared and accessed to a minimum. The current proposal is a “bare-bones” approach involving a simple mortgage count.

Issue 3 – Contribution of pre-existing mortgage data by credit providers to the CRA

- The HKMA is of strong view that it is essential to include the pre-existing mortgage data; otherwise, there will be a big loophole in the arrangement and effectively defeat the purpose of the proposal. At present, the loan tenor of most newly approved mortgages is between 20 to 30 years. Even though some mortgage borrowers may make an early repayment of their mortgage loans for different reasons (such as switching to another property or other investment considerations), it will take not just a few years but many years for the CRA database to be able to serve its intended purpose if existing mortgage data is excluded from the database. To carve out existing mortgage data will also create a special class of mortgage borrowers whose mortgage data will not be known to credit providers. This will significantly impede the effectiveness of the database in enhancing overall financial stability in Hong Kong.
- The HKMA notes that the industry has obtained legal advice from solicitors and Senior Counsel on this issue. According to the legal advice obtained, the contribution of mortgage data relating to pre-existing mortgages is within the ambit of data protection principle 3 of the Personal Data (Privacy) Ordinance. The contribution by credit providers of mortgage data of pre-existing mortgages to a CRA for compiling a mortgage count is a lawful purpose directly related to the original purpose for which such data were collected and relates directly to a core activity of credit providers. The HKMA understands that the industry has already forwarded the legal advice to the PCO for reference. In view of this, there are no legal impediments for including pre-existing mortgage data in the database of the CRA. For this reason, from a legal perspective, we are of the view that prior notification to customers before contributing such data to the database is not necessary. It is also important to note that a credit provider will only be able to access such positive mortgage information in the future with the consent of the borrower.

Issue 4 – Use of Mortgage Count on or after implementation

- It would not be desirable to stipulate that access to the types of credit data is to be constrained by the types of loans applied for. The utmost consideration of a bank when deciding whether to approve a loan application is the applicant's repayment ability, which will definitely be affected by all the loans (including mortgages, credit card debts and unsecured loans) the applicant already has. At present, when bank customers apply for credit cards or unsecured loans, banks will ask customers to declare information on their outstanding mortgage loans.
- It is relatively easier for borrowers to apply for a credit card debt or unsecured loan than to obtain a mortgage. Some borrowers might use cash advances from credit card to service their mortgage payment or to partly finance their mortgage down payment. It will be a loophole in the arrangement if the borrowers' total indebtedness could not be assessed.

Issue 5 – Transitional period

- Based on the reasons stated below, the HKMA considers that the proposed 24-month transitional period is appropriate.
- There was also a 2-year transitional period when the positive credit database of credit card and unsecured loans was introduced. In light of the experience last time, a 2-year period is considered appropriate. The last experience also showed that when the 2-year transitional expired, there was no large scale loan termination or debt collection measures on the part of banks.

Issue 6 – Implementation safeguards

- The Code of Practice on Consumer Credit Data (Code) which was last updated in June 2003 stipulates requirements on data security and system integrity safeguards by credit providers and CRA. CRA is also required to commission an independent auditor to conduct a compliance audit on an annual basis. In our view, the necessary safeguards have already been built into the Code. The HKMA has no objection to the proposal of the PCO in the Consultation Document that the CRA should commission an independent compliance audit within 6 months from the implementation date.
- There are also comparable security and data protection measures in the SPM IC-6 (this is a statutory guideline issued by the HKMA) which authorized institutions need to observe in relation to the sharing and use of the consumer credit data through a CRA, and AIs will not be able to access such data for marketing purposes. AIs, as credit providers, will maintain access log and other records and conduct annual compliance audit to ensure that their data management practices are adequate and effective to warrant compliance with the Code of Practice on Consumer Credit Data, SPM IC-6 and their internal policies and procedures. While SPM IC-6 has already specified that AIs should have clear and comprehensive policies and procedures for the sharing and use of consumer credit data through a CRA to ensure compliance with the requirement of the Code, the HKMA will amend SPM IC-6 to cater for the changes associated with the positive mortgage data proposal so that the same set of supervisory requirements will apply to the sharing of mortgage data.